



**Issue Date: 11 September 2003**

**BALCA Case No.:** 2002-INA-221  
**ETA Case No.:** P2001-NJ-02459574

*In the Matter of:*

**MEAT DEPOT,**  
*Employer,*

*on behalf of*

**KAPIL GROVER,**  
*Alien.*

**Certifying Officer:** Dolores DeHaan  
New York, NY

**Appearance:** Franklin S. Abrams, Esquire  
New York, NY  
For Employer

**Before:** Burke, Chapman and Vittone  
Administrative Law Judges

## **DECISION AND ORDER**

**PER CURIAM:** This case arises from an application for labor certification<sup>1</sup> filed by a Wholesale & Retail Meats & Fish Business for the position of Meat Cutter. (AF 34-35).<sup>2</sup> The following decision is based on the record upon which the Certifying Officer (CO) denied certification and Employer's request for review, as contained in the Appeal File ("AF").

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<sup>1</sup> Alien labor certification is governed by section 212(a)(5)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(5)(A) and 20 C.F.R. Part 656.

<sup>2</sup> "AF" is an abbreviation for "Appeal File".

## **STATEMENT OF THE CASE**

On January 9, 1998, Employer, Meat Depot, filed an application for alien employment certification on behalf of the Alien, Kapil Grover, to fill the position of Meat Cutter. The job to be performed was described as follows:

Cut and trim meat using hand tools and power equipment including grinder, cubing machine and power saw. Clean and cut fish and poultry. Shape, lace and tie roasts.

Minimum requirements for the position were listed as two years experience in the job offered. (AF 35).

Employer received one applicant referral in response to its recruitment efforts. That applicant was rejected by Employer as unqualified for the position. (AF 18-19).

A Notice of Findings (NOF) was issued by the Certifying Officer (CO) on January 29, 2002, proposing to deny labor certification based upon a finding that Employer had rejected the U.S. worker applicant for other than lawful, job-related reasons. (AF 26-28). Employer rejected applicant Peterson because his experience was in a supermarket, not wholesale, and he was unfamiliar with USDA pre-operational procedures. The CO observed that such requirements were not listed on the ETA-750A form and advised that Employer could not add additional requirements to the position subsequent to advertising and receiving responses from a qualified applicant. Employer was instructed to further document specific lawful, job-related reasons for rejection of this applicant.

In Rebuttal, Employer simply stated that the two years' experience required must include the pre-operational procedures necessary to perform the duties in its type of establishment. (AF 29).

A Final Determination denying labor certification was issued by the CO on March 14, 2002, based upon a finding that Employer had failed to adequately document lawful rejection of U.S. worker Peterson. (AF 30-31). The CO reiterated her finding in the NOF that the ETA-750A form did not reflect any special requirements or special qualifiers as they relate to the position offered. Thus, the CO concluded Employer had failed to adequately establish that the applicant was rejected solely for lawful job-related reasons.

Employer filed a Request for Review by letter dated March 18, 2002, and this matter was referred to this Office and docketed on July 2, 2002. (AF 38).

### **DISCUSSION**

Federal regulations at 20 C.F.R. § 656.24(b)(2)(ii), state that the Certifying Officer shall consider a U.S. worker able and qualified for the job opportunity if the worker, by education, training, experience, or a combination thereof, is able to perform in the normally acceptable manner, the duties involved in the occupation as customarily performed by other workers similarly employed. Section 656.21(b)(6) provides that U.S. workers applying for a job opportunity offered to an alien may be rejected solely for lawful job related reasons. Section 656.20(c)(8) requires that the job opportunity be clearly open to any qualified U.S. worker.

In the instant case, Employer has rejected a U.S. worker for lacking unstated requirements. An employer must state all the requirements for the petitioned position on the Form ETA-750A application, and if an applicant meets the requirements as stated by the employer, he or she is deemed qualified for the job. *See, Bell Communications Research, Inc.*, 1988-INA-26 (Dec. 22 1988)(*en banc*). In *Bell* the Board held that the actual test was whether the applicant met the job requirements in the Form ETA 750A, item 14 (requirements). In general, labor certification is properly denied where an employer unlawfully rejects workers who meet stated minimum education and experience

requirements. *ABC Home Video Corp.*, 1993-INA-480 (Nov. 16, 1994); *Banque Francaise Du Commerce Exterieur*, 1993-INA-44 (Dec. 7, 1993); *American Café*, 1990-INA-26 (Jan 23, 1991).

Here, the record reflects the applicant is a graduate of the National School of Meat Cutting and has 18 years experience as a Meat Cutter. (AF 16). Employer's stated basis for rejection of applicant Peterson was that he was not familiar with the USDA pre-operational procedures and thus would require a lengthy training period. Nowhere on the ETA-750A form or the advertisement is there any mention that familiarity with these regulations or procedures is required. Thus, we conclude that applicant Peterson was unlawfully rejected on the basis of unstated requirements.

Employer having failed to adequately document lawful, job-related reasons for the rejection of this qualified U.S. worker, it is determined that labor certification was properly denied.

### **ORDER**

The Certifying Officer's denial of labor certification is hereby **AFFIRMED** and labor certification is **DENIED**.

Entered at the direction of the panel by:

**A**

Todd R. Smyth  
Secretary to the Board of  
Alien Labor Certification Appeals

**NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW:** This Decision and Order will become the final decision of the Secretary of Labor unless within 20 days from the date of service, a party petitions for review by the full Board of Alien Labor

Certification Appeals. Such review is not favored, and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

Chief Docket Clerk  
Office of Administrative Law Judges  
Board of Alien Labor Certification Appeals  
800 K Street, NW, Suite 400  
Washington, D.C. 20001-8002

Copies of the petition must also be served on other parties, and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five, double-spaced, typewritten pages. Responses, if any, shall be filed within 10 days of service of the petition and shall not exceed five, double-spaced, typewritten pages. Upon the granting of the petition the Board may order briefs.